Petition

81-827

FILED
OCT 16 1981
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

October Term, 1981

No. _____

H. Gordon Howard,

Petitioner,
Pro Se

v.

The People of the State of Colorado;
The United States of America;
The Attorney General of Colorado;
The Officials and Officers of the
Supreme Court of Colorado,

Respondents.

On Writ of Certiorari To The
United States Court of Appeals
For The Tenth Circuit

PETITION FOR CERTIORARI

H. Gordon Howard,
Petitioner, Pro Se,
2470 So. Ivanhoe Place,
Holly Hills,
Denver, Colorado 80222
303 / 756-0130

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QUESTIONS PRESENTED FOR REVIEW

Six Questions are herewith presented for decision that have never heretofore been presented for decision in a disbarment proceeding, to be determined by this Honorable Court, namely:

1. Is an attorney who is not acting in the capacity of an attorney in an attorney-client relationship, but who is merely pursuing his private Civil Rights and Constitutional Rights as a real estate broker engaged in real estate transactions in a nonprofessional capacity, in his own private real estate office under the sole personal and subject matter jurisdiction of the real estate board that licensed him as a broker subject to discipline by a State Bar committee, which had no jurisdiction to license, regulate, or discipline real estate brokers and salesmen?

2. Is a judgment of disbarment void and without legal effect, where the State court totally lacked jurisdiction over the subject matter in the disciplinary proceeding?

3. Is a judgment of disbarment procured by fraud, and fraudulent misrepresentations, of State Bar Officials valid, or does fraud vitiate the judgment?

4. Where a State Real Estate Commission has held a broker licensed by it not guilty of any improper, immoral, or unethical conduct in any of his real estate transactions, can a State Bar committee discipline the real estate broker by taking away his law license in a situation in which he was not acting as a lawyer in an attorney-client situation, but merely acted as a real estate broker in a nonprofessional capacity?

5. Is a judgment of disbarment, where the State Court had no jurisdiction over the subject matter, susceptible to the application of the doctrine of "res judicata"?

6. Is the "doctrine of res judicata" employable to uphold a judgment, where the judgment of disbarment by a State court

was obtained by and through fraud, and fraudulent representations?

NOTE ABOUT PARTIES IN THIS PROCEEDING IN THIS COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED.

The caption of the case in this Court contains the names of all the parties to this proceeding in this Court, whose judgment is sought to be reviewed.

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The People of the State of Colorado;
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On Writ of Certiorari To The
United States Court of Appeals
For The Tenth Circuit

PETITION FOR CERTIORARI

The Petitioner, H. Gordon Howard, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on August 4th, 1981.

OPINIONS BELOW

The United States Court of Appeals for the Tenth Circuit entered its judgment of "Res Judicata" on August 4th, 1981, and its order prevented the Petitioner herein from having a rehearing by directing that the mandate shall issue forthwith. The opinion of the U.S. District Court of Colorado below is set forth in the Slip Opinion of the said Circuit Court, based on "Res Judicata" in Appendix A-1, infra. Both the District Court and the Circuit Court were of the opinion that an opinion of a State Court like Colorado on discipline could not be retried, and was final and res judicata, contrary to the federal cases decised by the Supreme Court of the U.S. in the cases cited in this Petition for Writ of Certiorari herein.

JURISDICTION

The Petitioner herein invokes this Court's jurisdiction under the provisions of the Fourteenth Amendment to the United States Constitution, and also under the Fifth Amendment thereon, involving "due process" and "equal protection" of the laws.

STATUTORY JURISDICTION

28 U.S.C.A., Section 1331, Federal Question Jurisdiction. 28 U.S.C.A., Section 2201, Declaratory Judgments. The Federal Courts have jurisdiction under 28 U.S.C.A. Section 1331, where the claim is alleged to arise under the Constitution of the U.S., citing, *Ad Hoc Committee on Judicial Administration Vs. Massachusetts*, 358 Fed. Supp. 953, affd. 488 Fed. 2nd 1241, cert. denied 40 L.Ed. 2nd 763, 94 Sup. Ct. 2389.

STATEMENT OF THE FACTS

The petitioner herein was disbarred by the Supreme Court of Colorado in 1961. The petitioner was not acting in any transaction in which he was involved in unethical conduct, as a lawyer, or in a confidential relationship with a legal client. The petitioner was engaged solely in business transactions pursuant to his Civil Rights, as a real estate broker, protected by the Fourteenth Amendment to the United States Constitution, and in a private nonprofessional capacity.

The Real Estate Board of Colorado never took this petitioner's license from him over the incidents for which he was disbarred. In fact, the real estate broker's license was returned to the petitioner herein after the State Supreme Court disbarred the petitioner from practice of law, where no lawyerlike conduct was ever involved.

Both an administrative law judge of the Colorado Real Estate Commission, and a prominent Denver, Colorado District Court Judge, ordered the return of petitioner's real estate broker's license to him, after the two said judicial officers of the State of Colorado were presented with the full disbarment proceedings before the Colo. Sup. Ct., by the attorney general of Colorado's deputy, hoping to prevent the petitioner from renewing his broker's license. The two said judicial officers disagreed with the disbarment proceedings and results undertaken by the Bar of the Colo. Supreme Court, and ignored them.

The petitioner was found in said hearings to have good morals, and to be trustworthy on two grounds, namely: Petitioner had held an Insurance Broker's License from the State of Colo. since May 5th, 1955, and still holds the said broker's license. The judges found as a fact that as an insurance broker, the petitioner herein was always, and still was at the time of the hearings, a trustworthy individual.

The two aforementioned judicial officers also upon considering the testimony of a prominent Denver lawyer, and part time Municipal Judge, named Robert Holland, and whose father had been on the Supreme Court of Colorado as a judge for many years, including the job of holding the position as Chief Judge of the Colorado Supreme Court in 1958 and 1959, decided that the law license of the petitioner should have never

been taken from him, and that the broker's license, as a real estate broker, must be forthwith returned to the petitioner. If Robert Holland had not died a couple of years ago, he would now be representing the petitioner in this matter herein, because Robert was petitioner's regularly employed lawyer in all transactions.

The District Court of the United States for Colorado revoked the petitioner's license to practice law in the Federal Courts of Colorado on the ground of "res judicata", the said court holding that it would immediately disbar the petitioner, because he'd been disbarred by the State Supreme Court of Colorado, and that decision was final, conclusive, and not reviewable under the practice in the federal courts of Colorado. Petitioner requested a hearing, or trial, in the Federal Courts which request was denied, leaving the petitioner with no rights of review of the State Court judgment of disbarment. This constituted a denial of petitioner's rights and privileges under and pursuant to the Fifth Amendment to the U.S. Constitution.

The Circuit Court of Appeals for the Tenth Circuit also infringed upon, and denied, petitioner's Constitutional rights, guaranteed to plaintiff by way of "due process of law", and "equal protection of the laws" by the Fifth Amendment to the U.S. Constitution, by rubber-stamping the U.S. District Court Judgment as being "res judicata", just as the U.S. District Court for Colorado had "rubber-stamped" the Colo. Supreme Court judgment of disbarment against the petitioner, on the basis that said judgment was "res judicata", or was final, as being an "estoppel by judgment". Therefore the Colorado U.S. District Court denied petitioner a hearing, or trial on the merits of his case; and the United States Circuit Court of Appeals for the Tenth Circuit deprived the petitioner of an appeal by also denying petitioner his Fifth Amendment Constitutional Rights to an appeal, on the basis and ground of the doctrine of "Res Judicata."

These decisions of the federal courts of Colorado are in conflict with the decisions of The Supreme Court of the United States, and other federal courts, namely:

1. *Theard Vs. U.S.*, 354 U.S. 278, 281, 282; and
2. *In Re Ruffalo*, 390 U.S. 544, at 547; and
3. *In Re Oliver*, 333 U.S. 257, 273; and
4. *McLaughten Vs. Wheat, Et. Al.*, 95 Fed. 2nd 101.

The Supreme Court of Colorado in disbarring the petitioner Howard never had jurisdiction over the subject matter of the proceeding, because the subject matter in issue was not that of a lawyer and his client, but was conduct of a real estate broker, not in the professional capacity of a lawyer, but rather in a real estate broker's private capacity to do business under his Civil Rights, and Constitutional Rights of the United States Constitution.

The Supreme Court of Colorado succeeded in disbarring the petitioner herein through the fraud and misrepresentations of its officials, namely the then Attorney General of Colorado, and the then chief deputy of the Attorney General of Colorado, and the Chairman of the then constituted Grievance Committee, who all lied to the petitioner and told him that he did not have to subpoenae two witnesses who'd recanted and changed their testimony, because they'd see to it that the witnesses were present at the Petitioner's disciplinary hearing so that the petitioner could cross-examine the witnesses. That by said false and fraudulent representations of the officials of the Supreme Court of Colorado, the petitioner was induced to rely on the two lay witnesses being present for cross-examination. The two said witnesses were the only ones usable against the petitioner herein, and the fraudulently acting officials, mentioned supra herein, eloigned said witnesses, and hid them out, keeping them away from the grievance committee hearing, and thereby denying to petitioner a right to confront and examine, or cross-examine said witnesses, who'd assured the petitioner that they'd lied before, and wanted to be present at the said grievance committee hearing to clear the petitioner of any wrongdoing, or punishment.

Petitioner had an eyewitness who could have cleared him of any unethical conduct, and when she came to the grievance committee hearing, the officials of the Supreme Court of Colorado ridiculed and insulted, and heaped abuse upon her, calling her that "Mexican Woman", and even stating that no "Mexican's word was worth a cent", thereby ignoring the petitioner's rights to "due process of law" pursuant to the Fourteenth Amendment to the U.S. Constitution, and Mrs. Esther Montoya broke down emotionally under the verbal abuse heaped upon her, right on the witness stand. Such conduct deprived the petitioner of his rights to "due process",

and "equal protection", guaranteed by the 14th Amendment to the U.S. Constitution.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

1. Where a citizen, who is an attorney, but who is acting not in the capacity of an attorney at law, but rather in the capacity of an individual citizen in pursuance of his Civil Rights, as a real estate broker, afforded him by the United States Constitution, he cannot be disciplined, because where an amendment to the United States Constitution is in conflict with a system to ensure professional conduct, it is the Constitutional rights of the citizen that must prevail in guaranteeing the protection of the citizen in the exercise of his private Civil Rights, which are protected by the United States Constitution, citing: *Polk Vs. State of Texas*, 374 Fed. Supplement 784 (1974).

2. A mere business transaction by which somebody dealt with a lawyer in a sales and purchase contract of property, which transaction she later became dissatisfied with, cannot afford ground for disbarment, where the lawyer did not act as her attorney, nor in a confidential relationship, but acted merely in a private nonprofessional capacity, citing: *Buhler Vs. Trick*, 144 N.E. 840, 195 Indiana 190.

3. The Supreme Court of Colorado and its grievance committee had no jurisdiction over the "subject matter" of this petitioner's disbarment, since only the Real Estate Commission of Colorado has jurisdiction over the licensing, control, regulation, and discipline of brokers and salesmen in the real estate business, when the said real estate agents are engaged solely in handling real estate business transactions, from a real estate office where only real estate and not law were handled. A judgment like a judgment for disbarment where a Court has no jurisdiction over the "subject matter" before it for adjudication, is not merely voidable, but is absolutely void, citing *United States Vs. Turner*, 47 Fed. 2nd 86, which holds further that a Court has inherent power to vacate judgments or decrees obtained without jurisdiction, either during the term, or afterwards. A judgment which is void is no judgment at all.

and is without legal effect, where the court pronounces a judgment without having jurisdiction over the "subject matter" before it, citing:

(1) *Whitten Vs. Coit*, 385 Pacific 2nd 131, 153 Colo. 157; and

(2) *Jordon Vs. Gilligan*, 500 Fed. 2nd 701, Cert. Denied 95 Sup. Ct. 1996, 421 U.S. 991, 44 L.Ed. 2nd 481.

4. A judgment obtained in violation of any promise by which an appearance to make a meritorious defense is prevented cannot stand, citing: *Walkins Vs. Hubbard*, 343 S.W. 2nd 189, 192. The fraudulent misrepresentations of the officials of the Supreme Court of Colorado made to the petitioner herein to the effect that he did not need to subpoenae two witnesses, because the witnesses would be present to testify at the grievance hearing, where they could be cross-examined, and questioned, which said fraudulent representations induced the petitioner to rely on the fraudulent promises made to him, and which said promises were made to petitioner in order to cheat and defraud the petitioner out of his meritorious defense, which would be provided by cross-examining witnesses who'd reneged and wanted to change their former sworn testimony, in the face of even being charged with perjury, because said two witnesses were very religious and feared God and retribution in the life after death far more than mundane punishment on earth. Such a fraud which induces an adversary to withdraw his plans for defense, is a fraud so evil and wrongful that it renders any judgment, obtained through the fraud, void and unconscionable, citing: *Groves Vs. Witherspoon*, 379 Fed. Supp. 52. This was the type of unconscionable fraud that vitiates and makes void all judgments obtained by its employment and use. This is the type of fraud used by The Supreme Court of Colorado and its agents and officials and representatives in order to disbar the petitioner herein. However, fraud vitiates and voids all human transactions, from the solemn judgment of a court of law to a private contract, and is as odious and as fatal in a court of law as in a court of equity, *New York Life Insurance Co. Vs. Nashville Trust Co.*, 292 S. Western 2nd 749, 200 Tenn. 513. Where fraud vitiates a judgment or decree it cannot stand, *Groves Vs. Witherspoon*, 379 Fed. Supp. 52.

The petitioner Howard was entitled to attack the judgment of disbarment against him, rendered by The Supreme Court of Colorado, as soon as he discovered the fraud used in obtaining the judgment was a ground to void and vitiate the said judgment, citing: *Robinson Vs. Phegley*, 163 Pacific 1166, 84 Oregon 124. It is the inherent power of a Federal Court to investigate and determine whether a judgment of a Federal Court was obtained by fraud, and that whether a judgment of a court was obtained by fraud, and that power is beyond question, citing: *Universal Oil Products Co. Vs. Root Refining Co.*, 328 U.S. 575, 90 L.Ed. 1447, 66 Sup.Ct. 1176, reversing 147 Fed. 2nd 259. And, where fraud is charged against a judgment of a State court, a federal court could inquire into the validity of the judgment, notwithstanding the entry of a judgment by the State Court, citing: *Margolis Vs. Nazareth Fair Grounds, etc.*, 249 Fed. 2nd 221. A judgment is void where there is fraud in reaching the adjudication, by denying a party "due process of law", citing: *Nordi Vs. Poinsatte*, 46 Fed. 2d 347; and also *Gibbons Vs. Brandt*, 170 Fed. 2nd 385, cert. Denied 69 Sup. Ct. 511, 336 U.S. 910, 93 L.Ed. 1074.

5. The Circuit Court of Appeals of the Tenth Circuit was in error, and manifestly abused its discretion, when it held in its "slip opinion" dated August 4th, 1981 that the judgments of disbarment against the petitioner herein by the Supreme Court of Colorado could not be reviewed by either the District Court of the United States for Colorado, below, or by the Circuit Court of Appeals of the Tenth U.S. Circuit, because said judgment was "Res Judicata". In this regard, a Federal Court will not, or should not accept disbarment in a State Court, citing: *In Re Barton*, 54 Fed. 2nd 810. And the case of *In Re Ruffalo*, 390 U.S. 544, at 547 held that: Though a disbarment action is entitled to some respect, it is not conclusively binding on the Federal Courts, citing: also the case of *Theard Vs. U.S.*, 354 U.S. 278, 281, 282, and the Ruffalo case which, cited supra, came to the Supreme Court of the United States on Writ of Certiorari, 389 U.S. 815.

Due Process of Law on a trial, or upon appeal, is denied to an attorney, where he is denied the right to defend himself, and present witnesses, law, and evidence in his behalf, and cross-

examine witnesses against him, citing: *In Re Oliver*, 333 U.S. 257, 273. The Supreme Court of Colorado deprived this petitioner herein of his Constitutional rights to "due process of law" under the Fourteenth Amendment to the U.S. Constitution; and the Federal District Court for Colorado, and the Circuit Court of Appeals for the Tenth Circuit denied the said petitioner's rights and privileges to "due process of law" both under the Fourteenth Amendment to the United States Constitution and the Fifth Amendment to the U.S. Constitution, by "rubber-stamping" the Colorado Supreme Court judgment of disbarment as "Res Judicata", and thereby upholding an illegal, and unconstitutional, and unconscionable judgment of disbarment of the Supreme Court of Colorado, which said court lacked any "subject matter jurisdiction" to disbar the petitioner, and also procured and entered the judgment against the said petitioner Howard through the use of artifice, trick, deceit, and pure fraud, as alleged supra hereinabove, all of which shenanigans rendered the judgment against the petitioner herein void, fraudulent and of no effect.

THE DOCTRINE OF RES JUDICATA IS NOT APPLICABLE

6. The Circuit Court of Appeals for the Tenth Circuit wrongfully and erroneously applied the doctrine of "Res Judicata" to the petitioner's disbarment thereby denying the petitioner the power to have the "fraudulent and non-jurisdictional judgment" of the Colorado State Supreme Court vacated and declared void and unconscionable, because the principle of res judicata may not be invoked to sustain fraud, and a judgment obtain by fraud, or collusion, may not be used as a basis for the application of the doctrine of res judicta, citing: *Grummons Vs. Zollinger*, 240 Fed. Supp. 63.

Furthermore, the doctrine of res judicata does not attach to a judgment when the court did not have jurisdiction of either the party to be charged, or the subject matter of the proceeding, citing: *D'Addino Vs. Dulles*, 136 Fed. Supp. 417.

A judgment procured by the use of fraud cannot be resorted to for the application of the doctrine of res judicata, citing: *Ray W. Hollaron, Et. Al. Appellants Vs. Blue and White Liberty Cab Co.*, 92 N.W. 2nd 794, 253 Minn. 436.

Therefore there was no basis for the decisions of either the U.S. District Court for Colorado, or the Circuit Court of Appeals for the Tenth Circuit, since the doctrine of res judicata could not be applied to the judgment of the Supreme Court of Colorado on disbarment of the petitioner herein under any circumstances, because the said State Court was without jurisdiction over the "subject matter" of the proceeding, and the use of fraud by the agents, representatives, and officials of said State Court vitiated the judgment and left it forever void, and ineffectual as a judgment. That therefore, since the judgment of disbarment of petitioner by the Supreme Court of Colorado was void, unconscionable, and unconstitutionally an invasion of, and deprival of, petitioner's Civil Rights, pursuant to the Fourteenth and Fifth Amendments, respectively, of the United States Constitution, the doctrine of "res judicata" applied to said judgment by the U.S. District Court for Colorado, and the Circuit Court of Appeals for the Tenth Circuit, could not apply, as shown by the authorities of law, cited supra herein, and this petitioner's law license was taken from him unconstitutionally and illegally, and should therefore be restored to this petitioner herein forthwith by order and decree of this Court.

CONCLUSION

For these foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Tenth Circuit.

Respectfully Submitted,

H. Gordon Howard,
Petitioner, Pro Se,
2470 South Ivanhoe Place,
Holly Hills,
Denver, Colorado 80222
303 / 756-0130

APPENDIX A-1

NOT FOR ROUTINE PUBLICATION

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

H. GORDON HOWARD, Plaintiff-Appellant,	)	
v.	)	
THE PEOPLE OF THE STATE OF COLORADO: THE UNITED STATES OF AMERICA: THE ATTORNEY GENERAL OF COLORADO; THE OFFICIALS OF THE SUPREME COURT OF COLORADO, Defendants-Appellees.	)	No. 80-1487

Appeal from the United States District Court
For the District of Colorado
(D. C. No. 79-Z-909)

Submitted on the briefs pursuant to Tenth Circuit Rule 9:

H. Gordon Howard, pro se.

John D. MacFarlane, Attorney General, Morgan Rumler, Assistant Attorney General, the State of Colorado, Denver, Colorado, for Defendants-Appellees.

Before SETH, Chief Judge, PICKETT and SEYMOUR, Circuit Judges.

PER CURIAM.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. *See* Fed. R. App. P. 34 (a); Tenth

Circuit R. 10(e). The cause is therefore ordered submitted without oral argument.

Appellant, H. Gordon Howard, brought this action in the district court seeking to enjoin enforcement of what appellant characterized as a fraudulent disbarment order issued by the Colorado Supreme Court in 1961. The action also seeks declaratory relief, damages, costs and fees. Jurisdiction is alleged under 28 U.S.C. §2201 and §1331. Defendants include the State of Colorado, the Attorney General of Colorado and the Supreme Court of Colorado. In addition, the complaint names the United States as a defendant in apparent reference to the action of the United States District Court for the District of Colorado in also disbarring the appellant.

The district court granted the Colorado defendants' motion to dismiss for lack of subject matter jurisdiction and the United States' motion to dismiss based on res judicata. We affirm.

In essence, appellant seeks to invoke the district court's jurisdiction to review the final order of the Colorado Supreme Court ordering appellant's disbarment. The district court correctly determined that its jurisdiction does not extend to review of attorney disciplinary actions by a state supreme court. *See* Doe v. Pringle, 550 F.2d 596 (10th Cir. 1976), *cert. denied*, 431 U.S. 916 (1977); Gately v. Sutton, 310 F.2d 107 (10th Cir. 1962). As we clearly stated in *Gately*:

> The federal courts do not have jurisdiction to review an order of the Colorado court disbarring an attorney in that state for personal and professional malpractice . . . . [A] petition for writ of certiorari to the Supreme Court of the United States is the only method by which review may be had.

310 F.2d at 108. Appellant pursued review in the United States Supreme Court and certiorari was denied. Howard v. Colorado, 369 U.S. 819 (1962).

The federal courts may examine state disciplinary proceedings where the state proceedings are offered to support disbarring the attorney from the federal courts. *See* Theard v. United States, 354 U.S. 278 (1957). However, this appellant has already fully utilized that remedy. The district court correctly determined that our decision in Howard v. United States

District Court, 318 F.2d 521 (10th Cir. 1963), barred the appellant's action against the United States under res judicata principles.

Accordingly, the judgment of the district court is affirmed. The mandate shall issue forthwith.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 79-Z-909

H. GORDON HOWARD, Plaintiff,	)	
vs.	)	ORDER
THE PEOPLE OF THE STATE OF COLORADO, et al., Defendants.	)	

WEINSHIENK, Judge

H. Gordon Howard was disbarred in 1961 from the practice of law by the Supreme Court of Colorado, *People v. Howard*, 147 Colo. 501, 364 P. 2d 380 (1961), and by the United States District Court for the District of Colorado. He brings this action against the People of the State of Colorado, the United States of America, the Attorney General of Colorado, and the officials and officers of the Supreme Court of Colorado. Plaintiff seeks an order enjoining enforcement of the state order of disbarment, a declaration of his rights, money damages of $5,945,058.24 against the State, and unspecified declaratory and injunctive relief against the United States. Plaintiff alleges jurisdiction under the Declaratory Judgment Act, 28, U.S.C. §2201, as well as federal question jurisdiction under 28, U.S.C. §1331.

All defendants have moved for dismissal, asserting the suit is barred by res judicata. The State of Colorado defendants also allege lack of subject matter jurisdiction. Defendants' Motions contain citations of authorities and Plaintiff has filed extensive memoranda. The Court is now fully advised and prepared to decide the Motions for Dismissal without oral argument.

I. SUBJECT MATTER JURISDICTION

Plaintiff challenges his disbarment by the State of Colorado. The Tenth Circuit has clearly ruled that this court has no jurisdiction to consider such a claim. In *Gately v. Sutton*, 310 F. 2d 107 (10th Cir. 1962), a disbarred attorney sought to challenge the evidentiary rulings made at the state disbarment proceedings. The court in *Gately* affirmed dismissal of the case in federal court for lack of jurisdiction, holding that only the Supreme Court of Colorado had jurisdiction to admit attorneys to practice in the Colorado courts and to disbar them for misconduct. That court clearly pointed out that the review power of the federal courts in state disbarment matters is narrowly limited to violations of the Due Process or Equal Protection Clauses of the Fourteenth Amendment, and that the only method of review is by a petition for a writ of certiorari to the Supreme Court of the United States. Plaintiff here has pursued that method of review, and certiorari has been denied. *Howard v. Colorado*, 369 U.S. 819 (1962). Therefore, the Motion to Dismiss for lack of subject matter jurisdiction is granted as to all state defendants.

II. RES JUDICATA

The United States of America alleges that the suit against it is barred by previous adjudication of the questions raised in this complaint in *Howard v. United States District Court for the District of Colorado*, 318 F. 2d 521 (10th Cir. 1963).

The rule of res judicata essentially provides that parties to an action and their privies are bound by a final judgment on the merits of a cause of action ordered by a court of competent jurisdiction. They are thereafter bound "not only as to every matter which was offered and received to sustain or defeat the claim and demand, but as to any other admissible matter which might have been offered for that purpose." *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876). "In determining the applicability of the rule of res judicata to a given case, a comparison must be made between the earlier proceeding and the latter one as concerns identity of the

parties, the causes of action, and the issues." *Katzberg v. Krebs*, 545 F. 2d 104, 108 (10th Cir. 1963).

A careful comparison of *Howard v. United States District Court for the District of Colorado, supra*, with the present action reveals that the plaintiff here is attempting to adjudicate matters which he raised or could have raised in the previous suit. The court in *Howard* reached a decision on the merits, which was affirmed by the Tenth Circuit as follows: "We are convinced that Howard had a proper and fair hearing in both the state court and federal district court." *Id.* at 523. It is clear that the previous adjudication of the validity of the disbarment proceedings in both the state and federal court was a valid and final determination upon the merits of the very claim sought to be asserted here. The rule of res judicata requires dismissal of this case.

It is therefore ORDERED that the defendants' Motions to Dismiss be and hereby are granted, and that Judgment of Dismissal is entered for the defendants and against the plaintiff, each party to pay his or its own costs.

It is further ORDERED that the Colorado defendants' Motion for Attorneys' Fees is denied.

DATED at Denver, Colorado, this 14th day of April, 1980.

BY THE COURT:

ZITA L. WEINSHIENK
UNITED STATES DISTRICT JUDGE